

National Labor Relations Board



Weekly Summary of NLRB Cases

Division of Information

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CASES SUMMARIZED
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Press Release ([R-2524](#)): Labor Board Expands E-Filing Project to Include All Documents in Representation Cases

Correction: In the February 27, 2004 issue (W-2936), the Respondents, Charging Parties, and locations for JD(SF)-14-04 on page 3 should read: *Southwest Regional Council of Carpenters and Carpenters Local 209* (Carignan Construction Co. and Shea Properties, LLC), Ventura, Los Angeles, Orange, and San Diego Counties, CA.

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Beverly Enterprises, Inc. and its subsidiary Beverly Health and Rehabilitation Services, Inc., et al. (6-CA-31111, 31707; 341 NLRB No. 38) Fort Smith, AR Feb. 27, 2004. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize Food & Commercial Workers Locals 1625 and 400 as the collective-bargaining representatives for the rehabilitation aides as part of the established collective-bargaining units at the Respondent's Paradise Pines facility in Jacksonville, FL; Suwanee Health Care Center in Live Oak, FL; Northwest facility in Washington, D.C.; and Crump Manor in Glen Allen, VA. The Respondent was also found to have violated the Act by refusing to apply the collective-bargaining agreements to the rehabilitation aides. [\[HTML\]](#) [\[PDF\]](#)

The Board, noting that the General Counsel has not alleged or shown that any employees have been constructively discharged as a result of the Respondent's unfair labor practices, did not affirm the judge's statement that the issue of whether the Respondent's unlawful conduct may have caused some employees to quit their positions as rehabilitation aides is appropriate for resolution in the compliance stage of this proceeding. It modified the judge's recommended Order accordingly and substituted a new notice.

(Chairman Battista and Members Liebman and Walsh participated.)

Charges filed by Food & Commercial Workers Locals 1625 and 400; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Pittsburgh, PA, March 11-14 and April 11, 2002; Jacksonville, FL on Oct. 9, 2002; and Washington, D.C. on Oct. 28, 2002. Adm. Law Judge William G. Kocol issued his decision Feb. 11, 2003.

CFS North American, Inc. d/b/a Convenience Food Systems, Inc. (16-CA-22135-1, -2; 341 NLRB No. 44) Frisco, TX Feb. 27, 2004. The Board affirmed the administrative law judge's finding that the Respondent committed numerous violations of the Act. Among others, it found that the Respondent violated Section 8(a)(1) of the Act by interrogating employees about their union and protected activities and those of other employees and threatening employees with termination and other consequences, and Section 8(a)(1) and (3) by issuing warnings to and discharging Anthony Lyle Varnes and Quinton Til Graham. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Anthony Lyle Varnes and Quinton Til Graham, Individuals; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Fort Worth, March 17-19, 2003. Adm. Law Judge Jane Vandeventer issued her decision Aug. 21, 2003.

Dimarco Paving & Construction, Inc. (4-CA-31120; 341 NLRB No. 42) King of Prussia, PA Feb. 27, 2004. In agreement with the administrative law judge, the Board found that the Respondent violated Section 8(a)(1) and (3) of the Act by discharging employee Nicholas Ferraioli on or about September 1, 2001, because he joined and supported Laborers Local 135. [\[HTML\]](#) [\[PDF\]](#)

Although the Board wrote that the General Counsel satisfied his burden of showing union animus, Chairman Battista and Member Schaumber did not rely on the statement made by General Superintendent Dellostretto, who, upon learning that Ferraioli had joined the Union, said: “This doesn’t mean sh—to me; you just can’t take it upon yourself to join the union and think you’re going to get a raise.” In their view, Dellostretto was stating his view that membership in the Union would not necessarily mean that a wage increase would be secured. Member Walsh agreed with the judge’s analysis of the statement. The Board found other evidence of the Respondent’s union animus which included: (1) the timing of Ferraioli’s discharge (the day after he disclosed his union membership); (2) Dellostretto’s comment, upon laying off Ferraioli, that he would “get his work out of Local 135”; and (3) the Respondent’s pretextual assertion that Ferraioli voluntarily quit his job on September 10, 2001.

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Laborers Local 135; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Philadelphia on March 26, 2003. Adm. Law Judge George Aleman issued his decision June 11, 2003.

Ramada Plaza Hotel (29-CA-25181, 25501; 341 NLRB No. 39) Corona, NY Feb. 27, 2004. The Board adopted the administrative law judge’s finding that the Respondent violated Section 8(a)(1) of the Act by soliciting grievances and promising and granting benefits to its employees for the purpose of dissuading them from voting for or supporting Hotel & Allied Services SEIU Local 758; by threatening employees with discharge and reprisal if they supported the Union or engaged in an economic strike; and Section 8(a)(1) and (5) by making unilateral changes in the unit employees’ terms and conditions of employment without giving the Union prior notice and an opportunity to bargain. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Schaumber and Walsh participated.)

Charges filed by Hotel & Allied Services SEIU Local 758; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Brooklyn on June 25, 2003. Adm. Law Judge Raymond P. Green issued his decision Sept. 17, 2003.

Riverbay Corp. d/b/a Co-Op City (2-CA-32617; 341 NLRB No. 34) Bronx, NY Feb. 24, 2004. Concluding that the rule prohibiting employees from participating in the election of the members of the Respondent's board of directors did not violate Section 8(a)(1) of the Act, Chairman Battista and Member Schaumber adopted the recommendation of the administrative law judge and dismissed this complaint allegation. The majority wrote: "the Respondent's rule prohibiting employee participation in the election, as it existed in 1999 and as modified in 2000, does not unlawfully interfere with, restrain, or coerce employees in the exercise of any rights protected by Section 7 of the Act." [\[HTML\]](#) [\[PDF\]](#)

Dissenting, Member Walsh found that the Respondent violated the Act by maintaining such a rule. He said that the rule is clearly directed at protected activity, and subsequent events make it crystal clear that employees would interpret it as such and would be chilled from engaging in such activity. Member Walsh contended that a finding of violation is warranted under *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enfd.* 203 F.3d 52 (D.C. Cir. 1999).

(Chairman Battista and Members Schaumber and Walsh participated.)

Charge filed by Co-Op City Police Benevolent Assn.; complaint alleged violation of Section 8(a)(1). Hearing at New York on May 1, 2002. Adm. Law Judge Michael A. Marcionese issued his decision June 28, 2002.

Rockline Industries, Inc. (26-CA-20950; 341 NLRB No. 37) Springdale, AR Feb. 27, 2004. The Board affirmed the administrative law judge's finding the Respondent violated Section 8(a)(1) and (3) of the Act by warning, suspending, and discharging David Kennan because of his activities for Food & Commercial Workers Local 2008. [\[HTML\]](#) [\[PDF\]](#)

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Food & Commercial Workers Local 2008; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Fayetteville, Sept. 15 and 16, 2003. Adm. Law Judge George Carson II issued his decision Nov. 21, 2003.

Western Great Lakes Pilots Association (18-CA-15976-1; 341 NLRB No. 36) Superior, WI Feb. 27, 2004. Members Liebman and Walsh, with Chairman Battista concurring, adopted the recommendations of the administrative law judge and found that the Respondent, by failing and refusing to continue bargaining with Longshoremen's Local 2000, violated Section 8(a)(5) and (1) of the Act. [\[HTML\]](#) [\[PDF\]](#)

The Respondent employs pilots who, based on knowledge of local waters and experience navigating on them, are certified to direct navigation of ocean-going vessels on the Great Lakes-St. Lawrence Seaway System. The Office of Great Lakes Pilotage, an arm of the U.S. Coast Guard, solicited ideas for improving pilotage services on the Great Lakes-St. Lawrence Seaway System. The Union supported a unified pilot management proposal to reform pilotage services throughout the entire system, which the judge said would have "put [the Respondent] out of business" if the Coast Guard adopted and implemented it. The Respondent argued that the Union's active support for the proposal constituted a disabling conflict of interest on the Union's part and justified the Respondent's suspension of bargaining.

In his concurring opinion, Chairman Battista wrote that he agreed with the judge's finding that the Respondent failed to meet the "heavy" burden of proving that the Union's support for that proposal created the kind of conflict of interest that posed a "clear and present danger" of interfering with the parties' collective-bargaining process. He said that "the Union's *aim* was not to put the Respondent out of business" and, by contrast, "the proposal is aimed at changing the nature of pilotage services throughout the Seaway-Waterway system. Thus, good-faith bargaining can occur, even while the Union seeks a change in that system."

(Chairman Battista and Members Liebman and Walsh participated.)

Charge filed by Longshoremen's (ILA) Local 2000; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Duluth, MN on Oct. 24, 2001. Adm. Law Judge William J. Pannier issued his decision May 15, 2002.

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Arizona Mechanical Insulation, LLC (Asbestos Workers Local 73) Phoenix, AZ February 18, 2004. 28-CA-18622; JD(SF)-12-04, Judge Thomas M. Patton.

Teamsters Local 657 (an Individual) San Antonio, TX February 23, 2004. 16-CB-6348; JD(ATL)-10-04, Judge Keltner W. Locke.

Kansas AFL-CIO (Office & Professional Employees Local 320) Topeka, KS February 23, 2004. 17-CA-22178; JD(SF)-16-04, Judge Burton Litvack.

Garden Manor Farms, Inc. (Food & Commercial Workers [UFCW] Local 342) Bronx, NY February 24, 2004. 2-CA-35335, et al.; JD(NY)-08-04, Judge Howard Edelman.

HQM of Bayside, LLC (Food & Commercial Workers [UFCW] Local 400) Lexington Park, MD February 25, 2004. 5-CA-30964; JD-14-04, Judge Karl H. Buschmann.

Siemens Building Technologies, Inc. (Operating Engineers Local 832) Rochester, NY
February 25, 2004. 3-CA-24050, 24304; JD-13-04, Judge Martin J. Linsky.

Laneko Engineering Co., Inc. (Electrical Workers [UE] Local 155) Philadelphia, PA
February 26, 2004. 4-CA-31660, et al.; JD-15-04, Judge Joseph Gontram.

NO ANSWER TO COMPLAINT

*(In the following cases, the Board granted the General Counsel's
motion for summary judgment based on the Respondent's
failure to file an answer to the complaint.)*

Advanced Telephonics, Inc. (Communications Workers Local 1109) (2-CA-35669;
341 NLRB No. 40) New York, NY February 27, 2004. [\[HTML\]](#) [\[PDF\]](#)

Tapiko Electrical Co., LLC (Electrical Workers [IBEW] Local 575) (9-CA-40524, 40597;
341 NLRB No. 33) Chillicothe, OH February 23, 2004. [\[HTML\]](#) [\[PDF\]](#)

TEST OF CERTIFICATION

*(In the following case, the Board granted the General Counsel's
motion for summary judgment based on the ground that
the Respondent has not raised any representation issue that is
litigable in this unfair labor practice proceeding.)*

Superior Protection Inc. (Government Security Officers Local 229) (16-CA-23210;
341 NLRB No. 35) Houston, TX February 25, 2004. [\[HTML\]](#) [\[PDF\]](#)

**LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS
IN REPRESENTATION CASES**

***(In the following cases, the Board considered exceptions
to Reports of Regional Directors or Hearing Officers)***

DECISION AND ORDER

Rockspring Development, Inc., East Lynn, WV, 9-RC-17844, Feb. 26, 2004

***(In the following cases, the Board adopted Reports of
Regional Directors or Hearing Officers in the absence of exceptions)***

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Odwalla, Inc., Berkley, CA, 32-RC-5204, Feb. 27, 2004

***(In the following cases, the Board denied requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)***

Cox Enterprises, Inc., d/b/a The Atlanta Journal-Constitution, Cumming, GA, 10-RC-15421,
Feb. 26, 2004

New School University, New York, NY, 2-RC-22697, Feb. 26, 2004

***(In the following cases, the Board granted requests for review
of Decisions and Directions of Elections (D&DE) and
Decisions and Orders (D&O) of Regional Directors)***

B.B. & T. Management Corp., Sacramento, CA, 20-RD-2373, Feb. 26, 2004
